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THE LAW OF OCCUPANCY RIGHT IN THE CASE OF INAMS.

A HISTORICAL SKETCH.

It is proposed in the course of this short sketch to trace in broad outline the currents and cross-currents of judicial opinion that have been till now witnessed in regard to the vexed question of occupancy rights in the case of inams and to indicate the widely divergent views that have been expressed from time to time. The dispute has principally centred round the onus of proof in cases of suits in ejectment by inamdars against their cultivating ryots and this question again has turned upon the presumption of law, if there is one, in respect of the nature and scope of inam grants. The view that undoubtedly prevailed among the early legislators and administrators was that inams were mostly, if not always, grants of the revenue and not grants of the soil. In Regulation IV of 1831 and in Acts XXXI of 1836 and XXXIII of 1838 which extended the operation of that regulation, inams were described as hereditary or personal grants of land revenue. It is not necessary to refer here to the object with which that Regulation and those Acts were passed or to trace how the failure of these and other measures finally culminated in the establishment of the Inam Commission in 1858. It is enough to say that the change in the administrative policy of the Government in regard to inams which was signified by the establishment of the Inam Commission and by the enfranchisement proceedings which were started by the Inam Commissioner did not in any way affect or alter the views which were till then prevalent regarding the nature of inam grants. In the preamble to the Enfranchised Inams Act [Madras Act IV of

1862] which was the outcome of the Inam Rules and the Inam Settlement, (this part of the preamble is now repealed) inams were referred to as hereditary and personal grants of land revenue though lower down in the same preamble reference is made to "the inam lands being thus enfranchised."

Section 4 of the Pensions Act (Act XXIII of 1871) similarly enacted that no Civil Court shall entertain any suit relating to any pension or grant of money or *land revenue* conferred or made by the British or any former Government, while S. 7 exempted from its operation any inam of the class referred to in Madras Act IV of 1862. The expressions 'inam' and 'grant of revenue' were obviously used as synonymous. [*Per curiam* in *Rama* v. *Subba* (1)].

From the following passage from the proceedings of the Board of Revenue, dated 5th January, 1818, it would be clear that they regarded inamdars as being just in the same position as zamindars, that is to say, as merely the assignees of the Government's right to land revenue. Referring to the cultivating ryots of Southern India, the Board said :—

"The universally distinguishing character as well as the chief privilege of this class of people, is their exclusive right to the hereditary possession and usufruct of the soil so long as they render a certain portion of the produce of the land, in kind or money as public revenue; and whether rendered in service, in money, or in kind, and whether paid to rajas, jaghirdars, zamindars, poligars, moothadars, shrotriyamdars, inamdars, or Government officers, such as tahsildars, amildars, amins, or tannadars, the payments which have always been made by the ryots are universally termed and considered the dues of the Government."

This question about the presumption in regard to the scope of inam grants first came up for consideration before the Bombay High Court and it was only after the rule was well settled there that a similar rule came to be adopted in Madras. Though the Bombay Court was earlier in laying down a working rule or presumption for cases in which the scope of an inam grant came in question, the distinction between a grant of the freehold of the land and a grant of the land revenue was a well-known one from the earliest times both in Madras and in Bombay and it was referred to in innumerable cases both in the Bombay and in the Madras High Courts. The distinction was a material one not only for the purpose of deciding disputes as to occupancy rights between inamdars and their ryots, the class of cases with which we are all familiar but also and especially in the earlier cases, for the purpose of deciding

1. (1888) I L R 12 M 98.

questions of jurisdiction arising under the Pensions Act which applied only to grants of land revenue. *See*, for instance, *Naro Damodar* v. *The Collector of Poona* (2), *Panchanadayyan* v. *Nilakandayyan* (3) and *Rama* v. *Subba* (1)].

The leading case which for the first time enunciated the rule that inam grants are mostly grants of land revenue was *Krishna Rao* v. *Ranga Rao* (4) in which the judgment was delivered by Westropp, C. J. To quote His Lordship's judgment—

> "Sanadi grants in inam, saranjam, jaghir, etc., are generally speaking, more properly described as alienations of the royal share in the produce of the land, *i. e.*, of land revenue, than grants of land, although in popular parlance occasionally so called."

In *Ravjinarayan Mandlik* v. *Dadaji Bapuji Desai* (5) his Lordship while fully adhering to the above statement in *Krishna Rao* v. *Ranga Rao* (4) added that "it is not true that such is invariably the case" a qualification which one would have thought was clearly implied in the previous judgment itself. The rule thus enunciated was repeatedly applied in the Bombay High Court in innumerable cases [vide *Vaman Janardhan* v. *The Collector of Thana* (6), *Ramchandra* v. *Venkat Rao* (7), *Kesav Rao* v. *Ganpat Rao* (8), *Ramkrishna Rao* v. *Nana Rao* (9), *Rajya* v. *Balkrishna* (10), *Balwant Ramchandra* v. *Secretary of State for India* (11),] and so recently as *Guru Rao* v. *Secretary of State for India* (12) a case to which reference will have to be made again later. The reason of the rule was explained in *Babaji* v. *Nanaji* (13), *Desai* v. *Bhavabhai* (14) and *Nawab Mir Kamaludin* v. *Partap Mota* (15) to be that a grant of a village by the Government whether native or British can only be subject to all existing rights against the Government, the most important of such rights being the right of permanent occupancy which cultivators had in their holdings in the great majority of instances.

This discussion, however, arose in an acute form in Madras only after the passing of the Madras Estates Land Act though we find in some at any rate of the earlier cases a

1. (1888) I L R 12 M 98.
2. (1877) I L R 6 B 209.
3. (1883) I L R 7 M 191.
4. (1867) 4 B H C R (A C J) 1.
5. (1875) I L R 1 B 523.
6. (1869) 6 B H C R 191.
7. (1882) I L R 6 B 598.
8. (1891) I L R 16 B 596.
9. (1903) 5 Bom L R 983.
10. (1905) I L R 29 B 415.
11. (1905) I L R 29 B 480.
12. (1916) I L R 41 B 408.
13. (1879) I L R 3 B 340 at 342.
14. (1880) I L R 4 B 643.
15. (1880) I L R 6 B 244 at 250.

passing reference to it. The two earliest cases which related to inamdars and their ryots [*Achayya* v. *Hanumantarayudu* (16) and *Venkatacharlu* v. *Kandappa* (17)] laid down conflicting rules as to onus of proof. In *Achayya* v. *Hanumantarayudu* (16) it was held "that the onus of proving occupancy right rested" on the cultivating ryot while it was laid down in *Venkatacharlu* v. *Kandappa* (17) that "it was for plaintiff to show that under the terms of the tenancy and in the circumstances that exist, he has a right to eject the defendant" and again that "when the plaintiff does not prove what the terms of the tenancy are, he cannot eject although defendant may fail to prove his right of occupancy." No doubt the learned Judges in *Venkatacharlu* v. *Kandappa* (17) say that *Achayya* v. *Hanumantarayudu* (16) does not in their opinion conflict with their decision and their Lordships Shephard and Subramania Aiyar, JJ., say in *Cheekati Zamindar* v. *Ranasoori Dhora* (18) that *Achayya* v. *Hanumantarayudu* (16) is not irreconcilable with *Venkatacharlu* v. *Kandappa* (17) if regard be had to the facts found in the former case, facts however which are not referred to in the report of the case; the most important of such facts being that there were previous decisions relating to the same village in which the cultivators were held to have had no right of occupancy. But as Justice Shephard nevertheless remarks—

> "It was in reality quite unnecessary in *Achayya* v. *Hanumantarayudu* (16) to decide any question as to the burden of proof."

Cheekati Zamindar v. *Ranasoori* (18) thus approved of *Venkatacharlu* v. *Kandappa* (17) and virtually dissented from the rule enunciated in *Achayya* v. *Hanumantarayudu* (16). *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (19) and *Cheekati Zamindar* v. *Ranasoori* (18) which are cases relating to zamindars and their estates are important only as showing that their Lordships regarded cases of inams as on the same footing so far as this question of occupancy right is concerned. In *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (19) especially, the learned Judges make it quite clear that the Government, the zamindars and inamdars stood in the same position in relation to their ryots by referring approvingly to the passage from the proceedings of 1818 of the Board of Revenue which has been set out above *in extenso*. It is, however, noteworthy that though *Venkatacharlu* v. *Kandappa* (17) laid

16. (1891) I L R 14 M 269. 17. (1891) I L R 15 M 95.
18. (1899) I L R 23 M 318. 19. (1897) I L R 20 M 299: 7 M L J 251.

down the rule as to onus substantially the same way in which it was laid down in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (19), no reference was made in it to the position of the inamdars as the assignees of the Government's share of the revenue—the reason in fact which is suggested for the rule impliedly in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (19) and more explicitly in later cases.

In *Ekambara Aiyar* v. *Meenatchi Ammal* (20), a case of a shrotriemdar and his ryot, Mr. Justice Boddam and Mr. Justice Bhashyam Aiyangar thought that the legal relation between zamindars, jagirdars, shrotriemdars and inamdars, etc., and their ryots was fully considered in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (19) and *Cheekati Zamindar* v. *Ranasoori* (18) and they therefore unhesitatingly and without any further discussion followed those rulings and held that the tenant in the case before them had a right of occupancy. In *Marapu Tharalu* v. *Telukula Neelakanta Behara* (21) the same view as to the onus being on the inamdar to prove that the lands themselves were given to him as inam prevailed as in *Venkatasubbaraya Sastri* v. *Kristnaiya* (22) (a decision of Bhashyam Aiyangar and Moore, JJ.). A distinction was, however, drawn between zamindars and inamdars as regards cases in which at the commencement of the tenancy both the *melvaram* and *kudivaram* rights are vested in the landholder. According to the *Cheekati case* (18) even in the case of waste lands or relinquished lands in which the zamindar owns both the *kudivaram* and the *melvaram* interests, if he admits a ryot to possession of such lands, the presumption would be that the ryot thereby acquires the right of occupancy just as in the case of the ordinary zamindari lands. But according to *Marapu Tharalu* v. *Telukula Neelakanta Behara* (21) it would be different in the case of inamdars and the presumption in favour of the acquisition of the right of occupancy would not apply in the case of lands in which the inamdar either initially owned the *kudivaram* or subsequently acquired it by relinquishment or otherwise. [*See* the explanation of *Marapu Tharalu* v. *Telukula Neelakanta Behara* (21) in *Bhadrayya* v. *Bapayya* (23). *See* also *Krishna Patrudu* v. *Mukunda Sahu* (24) which seems to imply the contrary].

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18. (1899) I L R 23 M 318.
19. (1897) I L R 20 M 299: 7 M L J 251.
20. (1903) I L R 27 M 401.
21. (1907) I L R 30 M 502.
22. (1902) 20 M L J 526.
23. (1911) 21 M L J 805.
24. (1910) 8 M L T 96: 6 I C 586.

This distinction has been recognised in the Estates Land Act, in the definition S. 3 (2) (*d*) where an estate is defined as "any village of which the land revenue alone has been granted in inam to a person not owning the *kudivaram* thereof" as well as in the exception to S. 8 where, after providing for merger of occupancy right in the case of estates generally, the legislature proceeds to lay down that "Notwithstanding anything contained in this section where, before or after the commencement of this Act, the *kudivaram* interest in any land comprised in an estate falling within cl. (*d*) of sub-sec. (2) of S. 3 has been or is acquired by the inamdar, such land shall cease to be part of the estate."

The passing of the Estates Land Act with its definition of an estate as set out in the previous paragraph has occasioned a controversy unprecedented in the history of land tenures in this presidency, a controversy which does not yet seem to have come to a close. In every case in which an inamdar sues his ryot in ejectment, this definition necessitates an inquiry into the nature of the original inam grant and into the circumstances surrounding such grant. It has first to be determined whether the inam consisted of both *melvaram* and *kudivaram* or of the *melvaram* alone and if the latter, it has next to be decided whether on the date of the grant the *kudivaram* interest vested in the inamdar or in some other person. It is not necessary to refer at length to the various cases that arose in the Madras High Court in regard to this question, with which every lawyer in this presidency is familiar. But it is interesting to note the way in which the discussion progressed. All sorts and kinds of distinctions were attempted in support of the claims of the inamdars. Inams granted by the Government, it was suggested, stood on a different footing from inams granted by zamindars. [Vide *Maddu Yerrayya* v. *Kangali Naidu* (25), *Lakshminarasimha Rao* v. *Sitaramaswami* (26) and *Suryanarayana* v. *Potanna* (27)]. Inams consisting of a whole village or villages must, it was argued, be accorded a separate and a different treatment from inam grants of particular extents in a village. [See *Lakshminarasimha Rao* v. *Sitaramaswami* (26)]. It was seriously contended that what is applicable to post-settlement grants does not apply to pre-settlement grants. [See *Venkatramiah* v. *Narayudu* (28)]. A distinction was even

25. (1910) I L R 34 M 246: 20 M L J 764.
26. (1913) 24 M L J 288.
27. (1915) I L R 38 M 608: 26 M L J 99.
28. (1912) 12 M L T 313.

sought to be based upon whether the original grantee belonged to an agricultural or a non-agricultural caste. [See *Venkatanarasimha Appa Rao Bahadur* v. *Subba Reddi* (29) and *Suryanarayana* v. *Potanna* (27)]. But all these distinctions were held to make no real difference in principle and the rule that was ultimately enunciated was broad enough to cover every one of those cases. The following comprehensive statement of the rule may be extracted from the head-note to the case reported in *Suryanarayana* v. *Potanna* (27) "Whether it is a whole village inam or a minor inam situate in a zamindari or in an inam village, the presumption is the same, viz., the grant is only a grant of the *melvaram* and it lies on the grantee to show that the grant was of both the *melvaram* and the *kudivaram* or that he owned the *kudivaram* when the inam was granted. The presumption arises irrespective of the person who is said to have originally made the grant" (whether it is the Crown or the zamindar) and we may perhaps add whether it was made before the permanent settlement or after it.

The rule thus stated was applied in cases without number both before and after *Suryanarayana* v. *Potanna* (27). [See *Bhadrayya* v. *Bapayya* (23), *Lakshminarasimha Rao* v. *Sitaramaswami* (26), *Venkatanarasimha Appa Rao Bahadur* v. *Subba Reddi* (29), *Narasimhacharyalu* v. *Ramabrahmam* (30), *Virabhadrayya* v. *Venkanna* (31), *Sitamraju Ramabrahmam* v. *Lakshmanna* (32), *Viswanadha Rao* v. *Chinnakolandai Nainar* (33), *Ambalavana Pandara Sannadhi* v. *Janaki Ammal* (34), *Govinda Reddi* v. *Ravi Kesavalu Naidu* (35), *Devi Shuknoji Kasidoss* v. *Narayana Reddi* (36), *Venkata Sastrulu* v. *Sitaramudu* (37), etc.].

Reference must be made here to certain slight differences of opinion that were felt for a time but which did not, however, leave anything like a permanent impression. The case in *Marapu Tharalu* v. *Neelakanta Behara* (21) to which reference has already been made was understood in some cases as being opposed to the rule as to presumption as set out in the

21. (1907) I L R 30 M 502.
23. (1911) 21 M L J 803.
26. (1913) 24 M L J 288.
27. (1913) I L R 38 M 608: 26 M L J 99.
29. (1912) 24 M L J 655.
30. (1913) 24 M L J 656.
31. (1913) 24 M L J 659.
32. (1912) 20 I C 843.
33. (1913) 1 L W 197.
34. (1914) 26 I C 618.
35. (1914) 29 I C 1005.
36. (1915) M W N 209.
37. (1912) I L R 38 M 891: 26 M L J 585.

previous paragraph [see *Suryanarayana* v. *Potanna* (27), *Chinnan* v. *Kondam Naidu* (38) and *Venkatrayudu* v. *Subbarayudu* (39)]. But it would rather appear that it was not really opposed to that line of cases and that the proper explanation of *Marapu Tharalu* v. *Neelakanta Behara* (21) is the one given in *Bhadrayya* v. *Bapayya* (23), the effect of which has been already stated in a previous paragraph. Even if we are to take it that their Lordships really wanted in *Marapu Tharalu* v. *Neelakanta Behara* (21) to lay down broadly that the presumption applicable to zamindaris is not applicable to inams, that case cannot be said to have affected the current of judicial opinion to any appreciable extent.

There was one point which, though not of very much importance, did, however, occasion some real difference of opinion. Since the jurisdiction of Civil Courts would be ousted if an inam fell within the definition of an "estate" as given in the Estates Land Act it was thought that the onus of proving that it was such an inam lay on the party alleging it. This involved a proof not only that the inam consisted of the *melvaram* alone but also of the further fact that the grant was to a person who did not own the *kudivaram* at that time. This suggestion as to onus based on considerations of jurisdiction originated with *China Nagadu* v. *Venkatasubbayya* (40). There was an obvious conflict between these two rules as to burden of proof and the anomaly was noticed very early of the onus of proof being placed on different parties in the same suit for the purpose of deciding the question of jurisdiction and for deciding the question of the landlord's title to eject. [See *Veerabhadrayya* v. *Venkanna* (31)].

It will be noticed that the trouble really lay in deciding whether the inamdars did or did not own the *kudivaram* at the time of the grant for as regards the question of the *quantum* of the grant, the presumption was always in favour of the ryot whether a question of jurisdiction was involved or not and the rule as to onus based on considerations of jurisdiction merely went to support the rule of substantive law that an inam *prima facie* consisted of the royal share of the produce only. In *Veerabhadrayya* v. *Venkanna* (31) their Lordships Benson and Sundara Aiyar, JJ. felt doubts as to whether a presumption

21. (1907) I L R 30 M 502.
23 (1911) 21 M L J 803
27. (1913) I L R 38 M 608: 26 M L J 99.
31. (1913) 24 M L J 659.
38. (1913) 26 M L J 169.
39. (1918) 8 L W 599.
40. (1910) M W N 639.

that the grantee of an inam was not the owner of the *kudivaram* at the time of the grant would be justifiable. In *Suryanarayana* v. *Potanna* (27), however, Justice Sadasiva Aiyar characterised the distinction made in *Chinna Nagadu* v. *Venkatasubbayya* (40) "between the presumption to be drawn where the jurisdiction of the Civil Courts will be ousted if the inamdar is held not to own the *kudivaram*, and the presumption to be drawn if no such question of jurisdiction arises in the suit" as a little too fine and far fetched and held that the burden of proving that an inamdar was the owner of *kudivaram* at the time of the grant lay upon the inamdar himself. His Lordship took the same view in *Chinnan* v. *Kondam Naidu* (38) also. A different view was, however, taken in two cases, *Jagannathacharyulu* v. *Kutumbarayudu* (41) and *Bapi Reddi* v. *Venkatacharyulu* (42) and in a still later case reported in *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (43) Justice Sadasiva Aiyar followed the view expressed in those two cases in preference to his own and held that the person seeking to oust the jurisdiction of Civil Courts by alleging that the inamdar was not the owner of the *kudivaram* at the time of the grant ought to prove his said allegation.

Excepting for *Marapu Tharalu* v. *Neelakanta Behara* (21) and an obscure judgment in *Mahomed Meera Lavvai* v. *Ramalinga Pillai* (44) and the difference of opinion just noticed about the presumption regarding the question whether the inamdar was or was not the owner of the *kudivaram* at the time of the inam grant, it can be safely asserted that for two decades if not more, the rule was universally laid down that an inam must be presumed (till the contrary is proved) to have consisted only of the *melvaram* interest. In case after case learned Judges of our High Court including some very distinguished Judges who were thoroughly conversant with the country, its tenures and its people unhesitatingly accepted and applied that presumption. And the same view was taken and for a much longer time in the Bombay High Court.

Then came a series of Privy Council decisions which to say the least took everybody by surprise. The earliest of these was *Suryanarayana* v. *Potanna* (45) reversing the decision of

21 (1907) I L R 30 M 502. 27. (1913) I L R 38 M 608: 26 M L J 99.
38. (1913) 26 M L J 169. 40. (1910) M W N 639.
41. (1914) 27 M L J 233. 42. (1914) 27 M L J 567.
43. (1916) 33 M L J 84. 44. (1911) M W N 84.
45. (1918) I L R 41 M 1012: 36 M L J 585 (P C).

the High Court reported in *Suryanarayana* v. *Potanna* (27). The reasoning of their Lordships in this case is interesting. Referring to the long course of decisions on the subject in the Bombay and Madras High Courts their Lordships observe: "The learned Judges of the High Court acted upon what they conceived to be a presumption of law, deduced by them from some decisions of the High Court at Madras and of the High Court at Bombay, to the effect that in the case of an inamdar it should be presumed, in the absence of the inam grant under which he held, that the grant was of the royal share of the revenue only and they cited the decisions upon which they relied as authorities. Some of those decisions to which they referred do not upon an examination of them support the opinion of those Judges as to the presumption which they applied in these suits. In their Lordships' opinion there is no such presumption of law."

Referring to a contention that in the times when the Reddi Kings ruled in the district the ownership of the soil was not in the sovereign or ruler, and that the right of the ruler was confined to a right to receive a share in the produce of the soil from the cultivator, their Lordships proceed to state that "that is an assumption which no Court is entitled to make and in support of which there is no reliable evidence." Then comes the most questionable part of the judgment. "The fact that rulers in India generally collected their land revenues by taking a share of the produce of the land is not by itself evidence that the soil of lands in India was not owned by them and could not be granted by them; indeed that fact would support the contrary assumption that the soil was vested in the rulers who drew their land revenue from the soil, generally in the shape of a share in the produce of the soil, which was not a fixed and invariable share but depended on the will of the rulers." They then rely in support of it upon the opening words of the preamble to Regulation XXXI of 1802 where it is recited that "whereas the ruling power of the provinces now subject to the Government of Fort St. George has, in conformity to the ancient usages of the country, reserved to itself and has exercised the actual proprietary right of lands of every description," language which is very similar to and almost identical with the language used in the preamble to Regulation XXV of 1802. It is well known how the latter regulation necessitated the passing of the

27. (1915) I L R 38 M 608: 26 M L J 99.

Interpretation Regulation IV of 1822 which declared in effect if not in so many words that the offending expressions were a mere flourish and were meaningless. The reliance which the Judicial Committee placed upon Regulation XXXI of 1802 in this case, and the inference they sought to deduce from it, are directly opposed to *Collector of Trichinopoly* v. *Lekkamani* (46) where the Judicial Committee itself said that the above regulation "never intended to assert that according to the usages of the country there was no private right to lands." And one might say with confidence that the contrary assumption which their Lordships wanted to formulate in *Suryanarayana* v. *Potanna* (45) is opposed to Hindu and Mahomedan legal conceptions and usages, to popular consciousness and to the opinions of experienced administrators and distinguished Judges and has nothing in fact to support it.

The next two decisions of the Privy Council, *Venkata Sastrulu* v. *Seetharamudu* (47) and *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) were something of a climb-down, *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) more so than the other case. In *Venkata Sastrulu* v. *Seetharamudu* (47) which was also a reversing judgment, their Lordships first say by a reference to *Suryanarayana* v. *Potanna* (45) that no such presumption as was acted upon by the High Court exists. They then add that "each case must therefore be considered on its own facts" and that "in order to ascertain the effect of the grant in the present case, resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained." And following the rule which they thus set for themselves their Lordships come to the conclusion that the "main grant carried not the land revenue alone but the whole proprietary interest in the property."

There is, however, no reference in this case to the "contrary assumption" of *Suryanarayana* v. *Potanna* (45) and *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) makes it quite clear that each case must be dealt with upon its own facts with special regard to the evidence and circumstances therein disapproving of the initial presumption in favour of the inamdar which a Full Bench of the Madras

45. (1918) I L R 41 M 1012: 36 M L J 585 (P C).
46. (1874) L R 1 I A 282.
47. (1919) I L R 43 M 166. 37 M L J 42 (P C).
48. (1922) I L R 45 M 586: 43 M L J 640 (P C).

Court deduced in *Muthu Goundan* v. *Perumal Iyen* (49) from the previous decisions of the Judicial Committee. It is not, however, easy to accept their Lordships' statement that neither in the case of *Suryanarayana* v. *Potanna* (45) nor in *Seturatnam Aiyar* v. *Venkatachela Goundan* (50) is there a suggestion of a presumption in favour of the inamdar or pattadar on the one side or of the ryot on the other. The judgment in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) indicates an anxiety on the part of the Judicial Committee to qualify and explain what was said in *Suryanarayana* v. *Potanna* (45). It is noteworthy that Mr. Ameer Ali who delivered the judgment of the Judicial Committee in this case [*Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48)] set out *in extenso* and approvingly referred to the passage to which reference has already been made more than once, the passage occurring in the Proceedings of the Board of Revenue of the 5th Jan. 1818 and relating to the nature of the relations between the Government, the zamindars and the inamdars on the one side and the cultivators on the other, though he did not deduce from the passage any presumption in favour of the ryot as was done in the earlier cases decided in this country, a deduction which one would think is a logical outcome of what was said therein.

The rule laid down in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) even if not quite accurate in theory was at any rate harmless in practical application. And it was repeated by the Judicial Committee in almost identical terms in a Bombay case which related to a saranjam grant [*Secretary of State for India* v. *Laxmibai* (51)] and which reversed the judgment and decree of the Bombay High Court in *Guru Rao* v. *The Secretary of State for India* (12).

Matters were, however, not left in this state very long. In *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) Sir John Edge [who had delivered the judgment in *Suryanarayana* v. *Potanna* (45) also] made some observations which are too sweeping in their character and which will have the effect of abrogating the rule laid down in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48). There is an

12. (1916) I L R 41 Bom 408.
45. (1918) I L R 41 M 1012: 36 M L J 585 (P C).
48. (1922) I L R 45 M 586: 43 M L J 640 (P C).
49. (1921) I L R 44 M 588: 40 M L J 429 (F B).
50. (1919) I L R 43 M 567: 38 M L J 476 (P C).
51. (1922) I L R 47 Bom 327: 44 M L J 471 (P C).
52. (1923) I L R 47 M 337: 46 M L J 546 (P C).

obvious conflict between these two decisions and the Judicial Committee itself will have to tell us some day how, if at all, these cases are reconcilable with each other. There is nothing to be said against that part of the judgment in *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) which is devoted to a construction of the sanad or to a discussion of such of the evidence in the case as was afforded by the register of 1809, the paimash account of 1816-17 or the conduct and dealings of the parties. In fact even the conclusions come to in *Suryanarayana* v. *Potanna* (45) and in *Venkata Sastrulu* v. *Seetharamudu* (47) can, as pointed out by Mr. Ameer Ali in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) be supported on the evidence on record without regard to any theory as to onus. But it is a matter for regret that observations should have been made in *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) ignoring what was said by the Judicial Committee itself in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) less than two years previously and upsetting the rule as to onus therein laid down. It is difficult and perhaps even impossible to support the broad statement that "it cannot now be doubted that when a tenant of lands in India in a suit by his landlord to eject him from them sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant." And this startling statement is sought to be supported by a reference to two and only two decisions, one in *Seturatnam Aiyar* v. *Venkatachela Goundan* (50) which related to a ryotwari pattadar and his tenants and which can hardly be regarded as applicable to cases where the landlord happened to be an inamdar or a zamindar and the other case in *Secretary of State for India* v. *Luchmeswar Singh* (53) which does not present anything like a parallel. It was a case in which the Government got into possession of a village known as Malinuggur which was part of the milkiat or zemindari of Darbhanga and in which all that the Government offered in support of their contention that they were perpetual tenants was in the language of Lord Hobhouse, "Some conjecture of

45. (1918) I L R 41 M 1012: 36 M L J 585 (P C).
47. (1919) I L R 43 M 166: 37 M L J 42 (P C).
48. (1922) I L R 45 M 586: 43 M L J 640 (P C).
50 (1919) I L R 43 M 567: 38 M L J 476 (P C).
52. (1923) I L R 47 M 337. 46 M L J 546 (P C).
53. (1888) I L R 16 C 223 (P C).

an agreement founded simply on their long possession at a uniform rate of payment." It was really a case in which permanent tenancy by "grant" was set up and found against and it certainly does not bear out the sweeping proposition sought to be based upon it—a proposition which would be applicable not only to all kinds of tenures but also to all cases in which a defence of occupancy right is set up irrespective of whether it is based on statute, custom or grant.

One would think that at least in this presidency the rule as to onus of proof instead of being established beyond doubt in the way in which His Lordship Sir John Edge stated it, was established very much the other way. Whether one turns to the cases in which the Government figured as the landlord or to the cases which related to zamindars or inamdars one finds that it was the plaintiff that had to make out that the tenancy was a terminable one and that it was validly terminated. Cases arising between ryotwari pattadars and their tenants were of course to the opposite effect but they stand on an entirely different footing. It can therefore be said without much fear of contradiction that the broad proposition enunciated by their Lordships of the Judicial Committee in *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) has little or no material to support it. And curiously enough even the decisions of the Privy Council which immediately preceded *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) do not themselves support such a proposition and they are not even referred to in the later case.

It is easy to point out that *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) and *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) must necessarily work at cross purposes. To take the most obvious illustration—the one that is afforded by these very cases of a suit by an inamdar against his ryot, if the ryot wants to rely upon the Estates Land Act in support of his right of occupancy, he has according to *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) to make out that the particular inam is an estate or in other words he has to prove firstly that the land revenue alone was granted in inam and secondly that it was granted to a person not owning the *kudivaram*. *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48), however, merely makes it a matter of decision on the evidence adduced by both parties.

48. (1922) I L R 45 M 586: 43 M L J 640 (P C).
52. (1925) I L R 47 M 337: 46 M L J 546 (P C).

Even after the decision of the Privy Council in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) strictly laying down that each case must be decided on its own facts it was held in *Venkatarangayya Appa Rao Bahadur* v. *Bajiraju* (54) in a case in which a zamindar sued to eject an inamdar after resuming the inam that "inasmuch as plaintiff sues in ejectment he is bound to prove that he has a right to eject" and that he can do that only by proving that he granted the land itself and is entitled to resume it. The Privy Council decision in *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) has started another line of cases which are very much in favour of the inamdar [*see* for instance *Narayana Doss* v. *Sankara Subba Aiyar* (55) per Ramesam, J., *Thirupathi Goundan* v. *Shamanna Goundan* (56) per Devadoss, J. and *Annamdevula Thata* v. *Khwaja Ahamadulla Khan Saheb Bahadur* (57)], and against the cultivating ryot but the scope and effect of *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52) cannot, by any means, be said to have been finally determined yet. [See *Subbarayudu* v. *Narasimha Rao* (58), *Periakaruppa Thevan* v. *Aiyanars and Kaniyalaswamigal Kovil Devasthanam* (59) and A. S. No. 177 of 1921 where *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) was followed in preference to *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52)].

It is impossible to exaggerate the disastrous effects which these kaleidoscopic changes of judicial opinion have produced and will produce upon the litigant world. It may be asked whether the legislature ought not even now to step in and prevent further controversy by giving effect to the salutary principle enunciated in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) though not to the stricter view taken in the Madras rulings before *Suryanarayana* v. *Potanna* (45). There is at present an acute difference of opinion among the learned Judges of the Madras High Court in the matter of interpreting the conflicting decisions of the Privy Council in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (48) and *Naina Pillai Marakayar* v. *Ramanathan Chettiar* (52). A reference to a Full

45 (1918) I L R 41 M 1012: 36 M L J 585 (P C).
48. (1922) I L R 45 M 586· 43 M L J 640 (P C).
52. (1923) I L R 47 M 337: 46 M L J 546 (P C).
54. (1923) 45 M L J 238.
55. (1925) 21 L W 692.
56. (1924) 48 M L J 654.
57. (1924) 48 M L J 701
58. (1924) 47 M L J 558.
59. (1925) 49 M L J 602.

Bench is imminent with every likelihood of matters being carried up to the Privy Council. A prompt intervention of the legislature to prevent further waste of public time and money and to avoid unnecessary and costly litigation is therefore, to say the least, very much called for.

I have not thought it necessary to refer to the familiar controversy about post-settlement minor inams in which certain excusable mistakes in statute-drafting have led to results which are neither happy nor equitable. The Full Bench decision in *Jarugumilli Brahmayya* v. *Achiraju* (60) has for the time being and at least so far as the High Court is concerned set the matter at rest but it is agreed on all hands that the legislature should intervene to put such post-settlement minor inams on the same footing as major inams.

V. GOVINDARAJACHARI,
High Court Vakil.

SUMMARY OF ENGLISH CASES.

BRITISH AMERICAN CONTINENTAL BANK *v.* BRITISH BANK FOR FOREIGN TRADE, (1926) 1 K. B. 328 : 95 L. J K. B. 326.

Contract—Money paid under mistake of fact to agent—Agent paying away money but subsequently repaid—Suit for recovery.

A entered into a contract with *B* to sell a quantity of francs and under the contract *A* was to deliver the same to *C*, the agent of *B*. *C* was to pay over the same to the bankers of *B* at Antwerp. On the morning of the day on which the contract was to be performed *B* cabled to *A* that the contract need not be performed, as he would be unable to pay for the francs on account of insolvency proceedings. By the time this cable was received, *A's* agent had handed over the francs to *C* who had passed it on to the bankers of *B*. *A* thereupon requested the bankers of *B* to return the francs, and they returned it to *C*, who under instructions from the Receiver in bankruptcy refused to return them to *A*. In an action for the return of the money against *C* on the ground it had originally been paid under a mistake of fact, *held*, as *A* was unaware at the time of payment of the bankruptcy of *B* he was entitled to the return ; and as the bankers of *B* had returned it to *C*, he was bound to repay it to *A*.

60. (1922) I L R 45 M 716: 43 M L J 229 (F B).

It is indisputable that if money paid under a mistake of fact is redemanded from the person who received it before his position has been altered to his disadvantage, the money must be repaid in whatever character it was received.

BRITISH INSULATED AND HELSBY CABLES, LTD. v. ATHERTON, 95 L J K B 336.

Income-tax—Deduction—Pension fund inaugurated by company—Lump sum contributed by company to establish fund—Nature of—If an item of deduction—Income-tax Act, 1842, *Sch. D, Case* 1, *R.* 3.

A company which had a big staff inaugurated a pension fund, based on contributions to be made by both the employer and the employed. To form the nucleus of the fund and to enable old servants who had not up to that time contributed, to participate in the fund, the company made a lump contribution of £31,784, a sum arrived at by an actual calculation on the basis that it should be exhausted as soon as the claims of the then existing staff were satisfied. The company claimed to deduct this amount for purposes of calculating its income-tax for the year when it was so set apart. *Held,* by a majority of the House of Lords (*Lords Carson and Blanesburgh dissenting*) affirming the decision of the Court of Appeal in (1925) 1 K. B. 421 that it was not an item of deduction for computing the profits of the year.

Per Viscount Cave, L. C.—The amount set apart is properly attributable not to revenue but capital expenditure and cannot be an item of deduction in calculating profits.

Per Lord Atkinson.—The payment of the sum amounted to an actual employment or intended employment of it as capital in trade, manufacture, etc., within the meaning of R. 3 of Case 1 of Sch. D.

Per Lord Buckmaster.—The amount was exclusively laid out for the purposes of the trade, and being an amount set apart as the nucleus of the Fund cannot be properly deducted in determining the balance of profits and gains.

Per Lord Carson.—An annual sum contributed to the pension fund on an actuarial basis for making the fund solvent for paying the pensions of the older members of the staff would be an ordinary business expense and hence a proper item of deduction. The lump sum set apart is only the actuarial equivalent of the same and cannot stand on any different basis.

Per Lord Blanesburgh.—The amount set apart represents a sum which comprised and compressed a series of annual payments on account of the employees. Quoad the company it is

in no material respect different from payments of salary made directly. The payment is properly attributable only to the revenue and not capital expenditure.

Case-law discussed.

LAKE *v.* SIMMONS, (1926) 1 K. B. 366.

Insurance—Policy—Construction of—Larceny by trick—Jewel handed to customer for approval—Theft of—Liability of insurer.

An insurance policy issued to a jeweller exempted the insurer from liability for "loss by theft or dishonesty committed by any customer in respect of goods entrusted to him." A customer took from the jeweller a jewel pretending to take it for the purpose of showing it to her husband for approval, and thereafter disposed of it for her own benefit. *Held*, she was guilty of larceny by a trick amounting to theft within the meaning of the policy, but as the jewel was only entrusted to her as agent of her husband, a prospective customer, the clause in the insurance policy did not protect the insurer from liability.

GRAINGER *v.* MAXWELL, (1926) 1 K. B. 430 : 95 L J K. B. 245.

Income-tax—Exchequer Bonds and War Loan Securities—Redemption of Bonds—No income therefrom during year of assessment—Interest received in preceding year—If basis of assessment—Income-tax Act, 1918, *Sch. D, Case III.*

An assessee held certain Exchequer Bonds and War Loan Securities. The former were redeemed in February, 1920 and consequently he received no interest therefrom. The Inspector of Taxes treated both as falling under one head, *i. e.*, Government bonds and claimed tax on the basis of the preceding year's receipts. *Held*, by the Court of Appeal affirming the decision of *Rowlatt, J.*, in (1925) 2 K. B. 376 that each was a unit of measurement by itself and as in the year of assessment there was no profit received from the Exchequer Bonds, recourse could not be had to the income of the previous year. (1921) 2 A. C. 222 applied.

RYE *v.* PURCELL, (1926) 1 K. B. 446 : 95 L. J. K. B. 380.

Landlord and tenant—Lease—Holding over—Payment of increased rent—Agreement in writing signed by lessor only—Covenants in old lease—If pass—Conveyancing Act, 1881, *S.* 10.

A lease of certain properties was granted for a period of 21 years, containing a covenant to deliver up the premises in

good repair. The interest of the landlord devolved by a series of assignments on the plaintiff, and shortly before the expiry of the lease there was a verbal agreement between the lessee and the plaintiff's immediate assignor to hold over at an increased rent. This agreement was confirmed by a letter written on behalf of the plaintiff's assignor. When the premises were finally handed over by the tenant, the plaintiff found them to be in a bad state of disrepair and thereupon he sued the lessee for damages for breach of the covenant. *Held,* (1) the terms of the old lease were by necessary implication incorporated into the new bargain; and (2) though the agreement to hold over was verbal, the subsequent confirmation of it by a letter written on behalf of the plaintiff constituted a sufficient "agreement in writing" within the meaning of S. 10 of the Conveyancing Act, 1881 to entitle the plaintiff to maintain the action.

Quaere: Whether the actual payment of increased rent after the expiry of the original period to the plaintiff after he acquired the reversion did not by itself entitle the plaintiff to sue on a breach of the covenant?

BRIGHTON COLLEGE *v.* MARRIOTT, (1926) A. C. 192: 95 L. J. K. B. 356.

Income-tax—Charity—Public school—Profits derived from school fees—If profits or gains of a trade—Income-tax Act, 1918, S. 37, Sch. D.

Brighton College is a public school, managed by a company incorporated under the Companies Acts, and its sole object was to provide a good secular and religious education. The income derived from school fees, after meeting the expenses, was devoted to the improvement of the college and could in no way be divided among the shareholders of the company. The question arose whether the surplus income was assessable to tax. *Held,* by the House of Lords affirming the decision of the Court of Appeal in (1925) 1 K. B. 312 that the college though a charitable object within the meaning of the Statute of Elizabeth, must be deemed to be carrying on a trade, even though the profits are used only for the purposes of the charity and as such the surplus income was assessable to tax. Nor could the surplus profits be regarded as "yearly interest or annual payment" falling within S. 37 of the Income-tax Act, 1918, which is exempted from taxation.

LAPISH *v.* BRAITHWAITE, (1926) A. C. 275 : 95 L. J. K. B. 406.

Municipality—Councillor—Alderman—Share or interest

in municipal contract—Managing director of company having contract—Disqualification arising from—Municipal Corporations Act, 1882, *Ss.* 12, 14.

Under S. 12 of the Municipal Corporations Act, 1882, a person is disqualified to be a Councillor if he "has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Council, but a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having a share or interest." S. 14 fixed that a person should not be qualified to be an alderman unless he is or qualified to be a councillor. *Held*, an alderman, who was a shareholder and managing director of a company having a contract with the Municipal Council and who was given a fixed pay but not commission, is not disqualified under Ss. 12 and 14 to be an alderman.

Desirability of changing the law by Legislation pointed out by the Lord Chancellor.

CORNISH MUTUAL ASSURANCE COMPANY, LIMITED *v.* COMMISSIONERS OF INLAND REVENUE, (1926) A. C. 281 : 95 L. J. K. B. 446.

Corporation tax—Mutual Insurance Company—If carries on trade or business—Finance Act, 1920, *S.* 52.

A company limited by guarantee and having no share capital carried on mutual fire insurance business. Each policy-holder became a member on taking out a policy and remained as such so long as his right to protection under the policy existed. The income of the company consisted of entrance fees, calls (if made), and interest on investment and was used for current expenses and payment of policies. The question arose whether the company was liable to pay Corporation tax. *Held*, though the company was only carrying out transactions with its own members, it did carry on a trade or business within the meaning of S. 52 of the Finance Act, 1920 and the surplus fund did constitute profits for the purpose of assessing Corporation profits tax.

HARTLAND *v.* DIGGINES, (1926) A. C. 289 : 95 L. J. K. B. 406.

Income-tax—Office or employment—Employer paying income-tax on salary of the employees—No agreement to pay—Income-tax paid if part of profit, perquisite or emolument—Income-tax Act, 1842, *Sch. E.*

A shipping company used to pay the income-tax on the salaries of all their employees and the amount so paid was

allowed as a trade expense in arriving at the profits of the company for purposes of assessment. There was, however, no agreement between the company and its employees to pay the income-tax. The question arose whether the income-tax paid was also part of the profits or emoluments of the employee, on which he was assessable to income-tax. *Held*, affirming (1925) 1 K. B. 372 that it was assessable, as it represented money's worth. The fact that the payment by the Company was voluntary made no difference in the matter.

WHELAN *v.* HENNING, (1926) A. C. 293 : 95 L. J. K. B. 406.

Income-tax—Shares—Dividends in prior years—No dividend during year of assessment—Claim based on average of three years—Liability to pay—Income-tax Act, 1918, *Sch. D, Case V, R.* 1.

A person possessed a number of shares in Ceylon on which he used to receive dividends. But during a particular year no dividends were declared, but he was sought to be made liable for purposes of income-tax on the basis of the usual three years' average. *Held*, affirming (1925) 1 K B 387, the receipt of income in the year of assessment is necessary before a person can be taxed under Case V of Sch. D of the Income-tax Act, 1918, and there being no income received, he was not liable to assessment.

In re DES REAUX AND SETCHFIELD'S CONTRACT, (1926) 1 Ch. 178.

Sale of land—Vendor refusing to apply to Court for order enabling him to give a good title—Ground of expense—Vendor rescinding contract—If entitled to.

An agreement to sell a house contained a clause "If the purchaser insists on an objection or requisition which the vendor shall be unable, or on the ground of expense, unwilling to remove or comply with, the vendor may by notice rescind the contract". As the title deeds did not show a clear title, the vendee asked the purchaser to apply to Court to get directions with a view to perfect the title. This the vendor refused to do on the ground of expense and afterwards gave notice rescinding the contract. *Held*, he was not entitled to rescind the contract on the ground that to take the steps pointed out by the purchaser would involve him in expense, nor was it a reasonable exercise of the condition.

In re CITY LIFE ASSURANCE COMPANY, LTD., (1926) 1 Ch. 191.

Company—Life insurance—Mortgage of policy to com-

pany—Liquidation—Set off—If allowed—Equitable assignment of mortgage to trustees—No notice to mortgagor—Effect of winding up—Bankruptcy Act, 1914, *S.* 31.

The owner of an insurance policy mortgaged it to the Insurance Company and went on paying premia regularly up to the end. Thereafter the Company went into liquidation and the policy-holder claimed to set off the amount of his mortgage debt against the value of his policy. *Held,* he was entitled to do so under S. 31 of the Bankruptcy Act, 1914. *Ex parte Price,* 10 Ch. D. 648 overruled; (1924) 2 Ch. 339 followed.

Where however after such a mortgage had been effected, the Company equitably assigned it to trustees, though without notice to the mortgagor, and thereafter winding up proceedings commenced, no right of set off arises, inasmuch as after the assignment there is no mutual credit or debt between the Company and the policy-holder. Case-law discussed.

In re BLACKWELL : BLACKWELL *v.* BLACKWELL, (1926) 1 Ch. 223.

Will—Construction—Devise to eldest of sons (if any) "who shall be living at the time of my death absolutely upon his attaining 21"—Nature of estate taken.

A testator by his will devised his real estate on trust for the eldest of his sons (if any) "who shall be living at the time of my death absolutely upon his attaining the age of 21 years" and failing the same to be held upon the trusts concerning his residuary estate. He died leaving a widow, three daughters and a son a few months old. *Held,* by the Court of Appeal affirming (1925) Ch. 312 that on a construction of the will the son took a contingent and not vested interest in the estate, contingent on his attaining the age of 21 years. He took the same interest in the accumulations also.

PUBLIC TRUSTEE *v.* ELDER, (1926) 1 Ch. 266.

Partnership—Account—Suit for—Parties—Custodian of Enemy Property—Rights of parties.

A business was being carried on in London between an English partner who was also the managing partner and three German subjects. On the outbreak of war, the managing partner carried on the business and collected assets. Later the Custodian of the Enemy Property having been appointed to act and directed to wind up the business, he filed a suit claiming an account from the English managing partner of all transactions between the several partners *inter se.* *Held,* the relief could not be granted unless all the partners had been impleaded in the suit.

The legal relations of partners in a dissolved partnership summarised.

In re A. AND M., (1926) 1 Ch. 274.

Bankruptcy—Infants—If can be adjudicated—Adjudication order made—Cancellation—Costs.

Where debts are incurred by infants, not for any necessaries supplied to them, nor in any way enforceable against them, they cannot be adjudicated bankrupt even on their own petition.

Quaere: Where a receiving order is actually made and later annulled, if the Receiver can deduct his costs out of the assets ?

In re STOLLERY : WEIR *v.* TREASURY SOLICITOR, (1926) 1 Ch. 284.

Evidence—Marriage—Registration of births and deaths of children—If evidence of marriage of parents—Admissibility of extracts—Births and Deaths Registration Act.

In an enquiry relating to a claim for administration, the question arose whether *X* and *Y* had been lawfully married to each other. No marriage certificate or record was available, but certificates of birth of some of their children and of the death of another child were put in as evidence. *Held,* by the Court of Appeal reversing Romer, J., the certificates were admissible as evidence, but were in no sense anything like conclusive evidence as to a lawful marriage having taken place. The question of the evidentiary value of the several entries in the certificates and the inferences to be drawn therefrom is one for the Trial Court.

In re CASSELL : PUBLIC TRUSTEE *v.* MOUNTBATTEN, (1926) 1 Ch. 358.

Will—Construction—Trust to maintain house and contents—Validity—Rule against perpetuities—Scope and operation of.

The rule against perpetuities is concerned with the creation and vesting of interests, not with their duration. If the interest must necessarily arise and be vested within the period, its duration beyond the period is no infringement of the rule. An interest is not obnoxious to the rule if it begins within lives in being and twenty-one years, although it may end beyond them. In other words, the rule prohibits vesting outside the period. It does not prohibit distribution beyond the period.

The testator by his will bequeathed a house to trustees on trust to allow his granddaughter *X* to use and enjoy it for

her life and thereafter for such of her issue as she might by will appoint or in default the first of her sons attaining the age of 21 or failing a son to the first of her daughters attaining that age. Subject to those trusts, the trustees were to hold the property upon similar trusts in favour of certain other specified relations of the testator. Finally followed a clause directing the trustees to pay rates and taxes, keep the premises insured against fire and burglary and in a proper state of preservation out of the income of his residuary personal estate. *Held,* there was no infringement of the rule against perpetuities.

MART *v.* MART, (1926) P 24 : 95 L. J. P. D. & A 29.

Divorce—Adultery—Legitimacy of child—Presumption—Deed of separation—Effect of.

A husband and wife executed in 1922 a separation deed containing the usual covenants. In 1925 a child was born to the wife and in a petition for divorce filed by the husband, the question arose whether the existence of the separation deed so far rebutted the legal presumption of access during marriage as to make the husband's evidence of non-access admissible. *Held,* the separation deed has the same effect as a judicial separation order and puts an end to the legal presumption, cohabitation, access and legitimacy. Evidence of non-access on the part of the husband is not excluded by the *ratio* in *Russel* v. *Russel,* (1924) A. C. 687.

SNEYD *v.* SNEYD AND BURGESS, (1926) P. 27 : 95 L J. P. D. & A. 22.

Divorce—Adultery—Condonation—What is—Fraudulent obtaining of—Effect—Question of belief in innocence—If material.

Condonation is the complete forgiveness and blotting out of a conjugal offence, followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven. The question of the state of mind of the forgiving spouse is immaterial in considering the question of knowledge and hence an erroneous belief in the forgiven party's innocence procured by fraud or misrepresentation is not a point for consideration, where in fact there was a reconciliation.

BRITISH OXYGEN COMPANY *v.* LIQUID AIR, LIMITED, 95 L. J. Ch. 81.

Copyright—Letter written by manufacturer offering reduced terms to customer—If an original literary work—

Publication of photograph of letter—Infringement of copyright—Copyright Act, 1911, *Ss.* 1, 2.

A letter written to a customer by a manufacturer offering him specially reduced terms with the object of keeping his custom confined to themselves is an "original literary work" within the meaning of S. 1 of the Copyright Act and any one publishing or threatening to publish it can be prevented by an injunction from doing it. Nor could such publication be justified on the ground it amounted only to a "fair dealing with the work for the purposes of criticism" within the meaning of S. 2.

ALLEN *v.* ROYAL BANK OF CANADA, 95 L. J. P. C. 17.

Negotiable instrument—Bill or note given on account—Effect of—Effect—Suspension of remedy and not discharge of debt.

When a negotiable instrument is given by a debtor to a creditor on account and accepted by the latter, but there is nothing said as to the terms on which the note was given, there is no presumption that it was given and accepted by way of actual payment of the debt due. The legal effect of the transaction is that the original debt still remains but the remedy for it is suspended till maturity of the instrument in the hands of the creditor. And the remedy is equally suspended if the bill or note be given, not by the debtor, but by a stranger.

CAVEN *v.* CANADIAN PACIFIC RAILWAY, 95 L. J. P. C. 23.

Master and servant—Action for wrongful dismissal—Contract of service—Domestic forum for investigation of disputes.

A contract of service between a master and servant contained a clause that the latter should not be dismissed for misconduct without the charge being investigated into by certain persons and the aggrieved party was also given a right of appeal to certain other persons. A charge of dishonesty against the servant was enquired into by the contemplated tribunal and held proved. The servant did not elect to appeal, but filed an action for wrongful dismissal. *Held,* no such action lay unless he first proved that the investigation before the private forum created by the agreement had not been properly conducted. Nor could he say that the clause for private investigation was invalid as ousting the jurisdiction of the ordinary Courts of the land.

JOTTINGS AND CUTTINGS.

The Presumption of Marital Coercion.—Prior to June 1, the rule of "marital coercion" prevailed. Where a married woman was charged with an offence committed in the presence of her husband, she was deemed, in the absence of proof to the contrary, to have acted under his "coercion" and was entitled to a verdict of acquittal. There were certain exceptions to this rule, *e. g.*, in cases of murder and treason no such presumption was admissible, nor was it admitted where the offence related to household management, *e. g.*, keeping a disorderly house, for there the woman was deemed to be in charge. The limits of application of the rule have never been accurately defined in the cases, nor has the exact ground for its origin ever been clearly ascertained, since no similar presumption has ever been made in the case even of a very young child, which is certainly under the control of its parents. Of late years sane public opinion has felt the rule to be unreasonable, and two or three years ago the notorious "Peel" trial at the Old Bailey led to an indictment of the rule by Mr. Justice Darling, who, however, had to give effect to it. A Commission, presided over by Mr. Justice Avory, enquired into the rule of law and reported in favour of its abolition. Bills to effect this, however, were opposed in the House of Lords by certain legal members of that House who took the view that in practice wives run danger of coercion. This view is not generally shared by persons acquainted with the modern world, and it has not finally prevailed. The present Act (S. 47) adopts a compromise and abolishes the presumption of coercion, but retains the plea as good provided it is proved that the wife, in fact, committed the offence under the coercion of her husband. No similar plea is available to a husband who commits an offence under the coercion of his wife, so that here once more strict logical equality between the sexes is not, in fact, brought about by the amendment of the law. Probably the resulting privilege in favour of wives is quite unimportant in actual practice. But there is a great deal to be said for rigorous logic in such matters, and failure to give effect to it because of the fancied advantages possessed by men sometimes leads to unexpected injustice, as Mr. Bingley has pointed out on two recent occasions in connection with the Custody of Children (Summary Jurisdiction) Act.

—*The Law Journal*, June 5, 1926, p. 485.

The Constitution of the Judicial Committee.—The debate on the Judicial Committee Bill, the second reading of which was moved by the Lord Chancellor on Tuesday, revealed a necessity, not merely for the increase of the *personnel* of the Judicial Committee itself, but for an increase in the number of Lords of Appeal in Ordinary. The Bill proposes to authorise the appointment, as members of the Judicial Committee, of two persons being members of the Privy Council, who are or have been Judges of a High Court in India, or who are barristers or advocates of not less than fourteen years standing, who practise or have practised in British India. Each such member of the Committee is to be paid a salary of £2,000 per annum out of the Consolidated Fund, and this may be increased by the Government of India up to £4,000. It is not proposed to make any further appointments of Indian Judges to the Committee under the Statutes of 1883 and 1908, pursuant to which Sir John Edge and Mr. Ameer Ali have for many years sat as members. Sir John Edge retired at the end of May, and the Lord Chancellor paid a graceful and well-earned tribute to the value of his services. Mr. Ameer Ali will remain a member of the Committee on the same footing as hitherto, but considerations of health have recently interfered with the regularity of his attendance. The increase in the number of Indian appeals is sufficient warrant for the present Bill, which will, no doubt, soon become law.

—*The Law Journal*, June 12, 1926, p. 508.

The Final Courts of Appeal.—The second reading of the Judicial Committee Bill served as the occasion for Lord Haldane and Lord Dunedin to call attention to the urgent necessity for the appointment of more Law Lords who could sit in the House of Lords as well as on the Judicial Committee. As Lord Haldane pointed out, he is at the moment the only ex-Lord Chancellor available. Lords Cave and Haldane, with the six Lords of Appeal, make up what may be called the regular *personnel* of the House of Lords in its judicial capacity, and they, with Mr. Ameer Ali, at present form the regular members of the Judicial Committee. The Judicial Committee finds it necessary to sit in two Divisions, so that to enable five Judges to form each Court —one in the House of Lords and two in the Judicial Committee—a total of fifteen Judges is wanted, and even that assumes that the Lord Chancellor sits with complete regularity, which he should not be expected to do. It has not

so far been found possible for both Divisions of the Judicial Committee to consist regularly of five Judges, and it has only been possible for two divisions to sit at all because peers like Lord Phillimore and Lord Darling have sacrificed their well-earned leisure to assist in the work of hearing appeals. It seems clear that an overwhelming case can be made out for an increase in the number of the Lords of Appeal in Ordinary, and we imagine that proposals to that end may be expected.

—*The Law Journal,* June 12, 1926, p. 508.

The Company Law Report.—The Company Law Committee appointed by the Board of Trade which sat last year, with Mr. Wilfrid Greene, K. C., as Chairman, has just issued its Report (Cmd. 2657, 1*s.* 3*d.*). The reference was "to consider and report what amendments are desirable in the Companies Acts, 1908 to 1917." The Committee held 38 meetings, and among the numerous witnesses examined were Mr. Justice Eve, Mr. A. F. Topham, K. C., and Mr. F. Whinney, the last-named being probably the most experienced practitioner at the Bar in Company matters. The Report recommends some substantial alterations in the law, and a large number of alterations in detail; but, generally speaking, the Committee have endorsed the current opinion that the system of Company law is working well. The subject is much too large to be covered by the short note to which we must this week confine ourselves, but the Committee report in favour of applying the law of prospectuses to "offers of sale," at least where the offer is made in complicity with the company; they follow to its proper conclusion the result of the *City Equitable Fire Insurance Company's Case* (1925, Ch. 407; 94 L. J., Ch. 445), and propose that directors should not be allowed to shelter themselves under a special clause in the Articles of Association from the consequences of negligence. They also propose that the law should be strengthened with regard to investigation and prosecution of delinquencies of directors and others engaged in company flotation and management, and where, by the issue of debentures or otherwise, the business of the company has been carried on in fraud of creditors. An extension of the registration of a company's mortgages is recommended, so as to include mortgages of ships, and goodwill, and certain other matters; but the Committee shrink from the hindrance to commercial transactions which would follow an extension of registration to all charges on a company's property; and they recommend that further information should be obtainable as to sub-

sidiary companies. In some respects the Report hardly takes a sufficiently strong line, but in general it represents a painstaking and serious attempt to grapple with difficulties which recent experience has disclosed.

—*The Law Journal,* June 12, 1926, p. 508.

The Legality of the General Strike.—The June Reviews are naturally a good deal occupied with the General Strike and its social and legal consequences. The articles by Sir John Marriott in the *Fortnightly,* by Mr. Masterman in the *Contemporary,* and by Mr. Gerald B. Hurst, K. C., M. P., in the *National Review* are all interesting, and as regards its legal aspects they accept the pronouncement of illegality made by Sir John Simon, and promptly followed by the decision of Mr. Justice Astbury to the same effect in *National Sailors', etc., Union* v. *Reed* (*ante,* p. 442). In the *English Review,* however, Dr. David Harrison, the author of " Conspiracy as a Crime and as a Tort in English Law," contests this view, though the result is only to show more clearly the need for an alteration of the law. He refers to the definition of a trade dispute in S. 5 (3) of the Trade Disputes Act, 1906, as, *inter alia,* "a dispute between employers and workmen," the word "workmen" being further defined as "all persons employed in trade or industry, *whether or not in the employment of the employer with whom a trade dispute arises*"; and to the *dictum* of Lord Loreburn, C., in *Conway* v. *Wade* (1909, A. C. 506) that "the section cannot fairly be confined to an act done by a party to the dispute." Hence, argues Dr. Harrison, since there was a genuine trade dispute in the mining industry, the General Strike was, for the purposes of the statute, in furtherance of that dispute, and the Trade Disputes Act protected it from illegality. Even if it did not, yet Dr. Harrison finds no ground for saying that the General Strike involved any one in criminal liability. That is an arguable point, and we have already tried to make our own contribution to the argument (*ante,* p. 428). We have also attempted to point out the amendments which are required at once to make the law clear, and to prevent the recurrence of the late trouble (*ante,* p. 469). That the law requires amendment all the writers, Dr. Harrison included, agree. The only remedy, he says, is "to make the calling of a strike in any vital industry on a national scale a criminal offence." And we may quote Mr. Hurst's concluding words: "Trade Unionism will lose its terrors to society when it

is brought within the law. It will only become peace-loving when all employers become magnanimous."

—*The Law Journal,* June 12, 1926, p. 509.

The Italian Bar.—A decree, promulgated on May 6, regulating the position of the Bar in Italy, has only lately been given to the Press. Barristers and procuratori are free to exercise their profession even when not belonging to the National Syndicates of the Bar. The Councils of the Bar have all been disbanded, and a revision of the Rolls is being undertaken by a special Royal Commission allotted to each judicial college. As no barrister can exercise his profession unless inscribed upon the Rolls, which formerly were regulated by councillors elected by the general assembly and by secret voting, under the new legislation two separate Rolls have now to be drawn up. One will comprise those members of the Bar who do not wish to enter the national syndicates, but whose work in the past has been in accordance with the interests of the nation; the second list will comprise Fascist members of the Bar belonging to the syndicates *de jure.* The chief innovation resulting from this decree will be the restriction of the number of barristers able to exercise their profession.

This new decree was opposed in Parliament and the Senate by Liberals and Democrats as being detrimental to the profession, and they deprecated loss of independence, autonomy and prestige of the professional councils. The speakers, one a henchman of Signor Giolotti, said that the Bar had never been guilty of anti-national work. In reply, the Minister of Justice and framer of the legislation, Signor Rocco, praised the Bar, pointing out that its members had been treated differently from the magistracy, which, comprising civil servants, came under the new bureaucratic law, which enables the Government to dismiss a servant who shows incompatibility with its general political tendency, while members of the Bar are only expected to be "good Italians".

—*The Law Journal,* June 12, 1926, p. 526.

The Constitutional Status of Shadow Cabinets.—Recent events of interest in the political world have called attention to an institution of very recent growth in the development of English Government, namely, the "Shadow Cabinet". This institution appears now to be a recognised feature of every political party when in opposition: both the Labour and Liberal Parties possess specimens of it; but it came into exist-

ence for the first time in 1923, after the resignation of Mr. Baldwin's ministry. The nearest anticipation in earlier history occurred on the accession of Mr. Bonar Law to the leadership of the Unionist Party in 1908, when that statesman invited Mr. F. E. Smith, as he then was, to seat himself on the front Opposition Bench—a place reserved by the customs and traditions of the House of Commons for ex-Ministers. By this action, of course, Mr. Bonar Law treated Mr. F. E. Smith as equivalent in the counsels of his party to an ex-Minister. But it is very often forgotten that, until the accession of Sir Henry Campbell Bannerman to the Premiership in 1905, neither Cabinet nor Premier were technically recognised as existing in English Law. The Premier was merely *primus inter pares* of His Majesty's Ministers and the Cabinet a secret committee of the Privy Council. Sir Henry took the necessary steps to legalise both institutions, and nowadays not only has the Cabinet an official secretary, but Minutes recording its transactions are kept. So unknown to the law was the Cabinet in earlier times that in 1852, on the accession of Lord Derby's Conservative Ministry, Henry Greville—the memorist and a partisan Whig, who filled the office of Clerk to the Privy Council—declined to attend meetings of the Conservative Cabinet, sheltering himself behind the plea that it was no part of his duties to attend an extra-legal meeting of the Privy Council. He, however, compromised by sending a subordinate to explain his views and take his place. According to the tradition recorded in Sir William Fraser's "Disraeli and His Day" Fraser was one of Disraeli's whips), the Cabinet was disposed to raise the legality of his plea by ordering his attendance and dismissing him if he refused, but Lord Derby waived the matter aside by remarking: "When I ring the bell it is all one to me whether the butler answers or sends his footman," or words to that effect. It may be that the Shadow Cabinet has before it a similar gradual growth into actual legal recognition.

—*The Law Journal*, June 19, 1926, p. 528.

Portugal and Poland: *The Rule of Law*.—Recent events in Portugal and Poland, which appeared to have followed the example of Spain, Italy and Russia by establishing military or semi-military dictatorships in place of Parliamentary Government, will recall to the minds of constitutional lawyers one of the most pregnant chapters in the late Professor Dicey's "Law of the Constitution". After explaining the "Rule of Law"

and the "Supremacy of Parliament," Dicey goes on to discuss and regret various suggested limitations on the sovereignty of Parliament which have been suggested at various periods of English history, *e. g.*, the inherent rights of the Royal Prerogative, the fundamental doctrines of the Common Law as embodied in Magna Carta, the fundamental principles of Christian Morality, and the Rights of the Electorate. But the veteran jurist then goes on to point out that, however unlimited in theory, yet in practice the absolute powers of Parliament are in fact subject to two very important checks. These he calls the "Internal Check" and the "External Check" respectively. The "Internal Check" merely means the fact that sooner or later Parliament must be dissolved and an appeal to the Electorate must follow, who will then presumaby undo any action of the Legislature which they strongly disapprove. The "External Check" means the danger of resistance and rebellion if Parliament (or even the majority of the Electorate) attempts to override any stubborn and powerful minority fanatically convinced of the justice of their cause. Dicey and other jurists have pointed out that the theoretically perfect constitution is one in which the Electorate coincides with the physical strength of the nation, so that the internal and external checks act in harmony and not in antagonism. This is usually the case in a Democracy, but there is always the possibility that the numerical majority may consist of persons too unorganised or otherwise feeble to assert their will in the case of resistance by an organised minority. This would appear to be the position in such countries as Russia, Italy, Spain, Portugal and Poland in which representative institutions are a recent innovation and not a slow growth such as they are in England. A theoretical danger of the same kind might conceivably occur in an English-speaking nation if the majority of electors, composed of women, happened to support some attempt to suppress a minority, *e. g.*, trade unionists, composed mainly of men. But the limited feminine franchise introduced in 1918, under which women have two-fifths of the voting power but not an absolute numerical majority, and which appears to correspond on the whole to the respective importance of the sexes in industrial life, would seem to render such a contingency remote.

—*The Law Journal*, June 19, 1926, p. 529.

The Great Libel Case Recalled.—Mr. Artemus Jones, K. C., one of many counsel recruited from the ranks of journalism, was, on Thursday night, made a Bencher of the

Middle Temple. His election recalls that he was the central figure in one of the most notable libel suits of this century, *Jones* v. *Hulton,* arising out of the use of his name as applied to a fictitious person in an article in a Manchester Sunday paper. The case was heard at the Assizes in 1908, and a future Lord Chief Justice, Mr. Gordon Hewart, was junior counsel for Mr. Jones. In the course of the trial it was admitted that the writer of the article had invented the name "Artemus Jones" without any knowledge of there being a living man possessing that name, but it was shown that the real Mr. Artemus Jones had actually been employed by the paper in which the article appeared and was well-known as counsel on the North Wales Circuit. The jury granted the plaintiff £1,750 damages, and the verdict was upheld on appeal to the Court of Appeal and the House of Lords. The case clearly established the principle that the intention of the writer goes for nothing if the libel would make those who read it reasonably infer that the plaintiff was aimed at. As Lord Coleridge, C. J., said in *Gibson and Evans* [(1889) 23 Q. B. D. 386] : " It does not signify what the writer meant; the question is whether the alleged libel was so published by the defendant that the world would apply it to the plaintiff." This dictum was quoted with approval by Lord Shaw in *Hulton* v. *Jones* [(1910) A. C. 26].

—*The Law Journal,* June 19, 1926, p. 529.

BOOK REVIEWS.

CRIMINAL PROCEDURE IN INDIA, by Sir John Woodroffe, M. A., B. C. L. Published by Messrs. Thacker, Spink & Co., Calcutta. Price Rs. 28.

A work of Sir John Woodroffe does not stand in need of any words of commendation from us. Apart from his fame as a Judge and as an author and sanskritist, he has two standard commentaries to his credit and here is a third. It combines—a very rare and difficult thing—brevity with accuracy, fulness and discussion of principles. To economise space, the practice of giving prominent part of one of the names in the cases and giving only one reference the most familiar one has been adopted and some process of selection also has been applied. Madras practitioners would perhaps wish for a larger citation of Madras cases. But with the best of

intentions, it is impossible to avoid a certain amount of local colouring. With all that, there is no doubt that both students and practitioners have been laid under a deep obligation by Sir John Woodroffe by his very valuable and authoritative work.

"TRIAL OF ABRAHAM THORNTON." Edited by Sir John Hall. Notable British Trials Series published by Messrs. Butterworth & Co., Ltd.

It has been one of the cardinal principles of English jurisprudence which every one administering criminal law in the country should ever bear in mind that "it is better that a hundred murderers should escape punishment than that one innocent man should suffer death" and the latest addition to the Notable British Trials Series, giving us the story of the sad death of Mary Ashford and the trial of Abraham Thornton which took place more than 100 years ago under the quaint old English procedure, is a strong illustration of this. The details of the story are quite heart-rending. A country girl of 20, of very attractive appearance, goes to a village ball, dances with the accused till midnight and in the small hours of the morning returns with him to her home, a few miles off. The accused admitted at the trial and even before that he had sexual connection with her but with her consent, and the medical evidence was clear that she was a virgin until the intercourse had taken place. The dead body of the girl was taken out of a pit of water in the neighbourhood early the next morning. Suspicion fell on the accused as the person last seen with her—and in fact he was the first to admit it—and he was charged with the murder based purely on a chain of circumstantial evidence. Local feeling ran high against him but Mr. Justice Holroyd who presided at the trial held the scales evenly for him. The prosecution evidence was to the effect that she was last seen at 4 A. M. blithe and gay, but the accused was able to account for every minute of his morning hours by a number of respectable witnesses. The prosecution story was a violent ravishing of the girl and the ravisher trying to hide his crime by throwing the unconscious girl into a deep pit of water and leaving her to drown. Much was made of traces of footsteps, but the investigation was not scientific and no safeguards had been taken to eliminate mistakes. The jury had no hesitation in finding the man not guilty and the Judge acquitted the accused.

Apart from the pathetic human interest in the story and the element of mystery which still surrounds the death, to the

lawyer the book is of great interest in that it gives him a glimpse of the old English procedure of "appeal of murder" and "wager of battle." Under the procedure then extant, the heir-at-law of the deceased filed an appeal against the acquittal and re-opened the proceedings. When it came on for hearing before Lord Ellenborough, C. J., and three of his puisnes including the trial Judge, the accused exercised the option of waging battle and challenged the appellant to single combat, an option which had never been invoked since the reign of Charles I. Then followed counter-plea, replication, rejoinder, etc., but the plea of waging battle was quite valid under the law and the Court accepted the same. The appellant who was a weak man gave up his appeal at the last moment and the accused was discharged. It was as a result of these proceedings that in 1819 this procedure of "appeal of murder" and the defence of "wager of battle," one of the last remnants of the ancient processes of English Law, was expunged from the Statute Book.

It is unnecessary for us to mention that all the usual features of the Notable British Trials Series are present in this volume. There is the neat historical introduction and the Appendices afford interesting reading containing as they do the forms of the "appeal of murder," the writ of *habeas corpus*, the counter-plea, replication, etc., and a full record of the proceedings in the Appellate Court.

THE LAW OF PLEADINGS IN BRITISH INDIA WITH PRECEDENTS, by P. C. Mogha, Subordinate and Assistant Sessions Judge, United Provinces. Published by Eastern Law House, Calcutta. Price Rs. 9.

This is one of the very few books on the principles and practice of pleadings in this country and we have therefore no hesitation in welcoming it. The art of framing accurate pleadings is, we have regretfully to admit, not so well understood or practised here as it is in England and Mr. Mogha in bringing out his work has placed the legal profession under obligations to him. The book is divided into two parts; the first part consists of 16 Chapters devoted to a full and exhaustive discussion of the principles of pleading with reference to the provisions of the Civil Procedure Code and the case-law on the subject. There is also a chapter on appeals and another on applications and affidavits. Part II gives precedents of different kinds of suits which ordinarily come before the Civil

Courts in this country arranged in alphabetical order according to the various subjects with explanatory footnotes appended to the precedents. There are also some precedent of applications under the Civil Procedure Code and of the other enactments of frequent use in the Civil Courts. We cannot conclude this review without noticing that this book has received the approbation of the Hon'ble Sir Grimwood Mears, the Chief Justice of the Allahabad High Court who has written a short introduction to the book.

THE GUARDIANS AND WARDS ACT, by A. C. Ghose, M. A., B. L., High Court Vakil, Calcutta High Court.

In these pages, the author who has produced many other legal publications has given the Guardians and Wards Act and Indian Majority Act with commentaries and references to all the decided cases noted up to date in appropriate places and under proper headings. The author has not before himself the more ambitious object of discussing and laying down principles on the subject which was achieved by the late Sir Ernest Trevelyan in his treatise in the Law of Hindu Minors, as the author thinks not only that there is no further room for such discussion but that it is unsuited for the matter of fact and workaday life of the present-day Law Courts. There is no doubt that with the multiplicity and frequent conflict of judicial decisions, the discussion of the principles has often gone into the background and we cannot therefore say that this small book noting up the decisions is not without its usefulness to the busy practitioner trying to hunt up cases.

GANATRA'S HAND-BOOK OF CRIMINAL CASES, Vol. IV, 1922-24.

We have great pleasure in acknowledging the receipt of this verbatim reprint of criminal cases from the six series of Indian Law Reports, *i. e.*, Calcutta, Madras, Bombay, Allahabad, Lahore and Patna series for the years 1922 to 1924 with a nominal index of all cases and references to the corresponding pages of the reports and a digest to the rulings.